

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Kevin Pollack,	:	Case No: 2:17-cv-10599
	:	
Plaintiff,	:	Judge:
	:	
v.	:	NOTICE OF REMOVAL
	:	
Nations Recovery Center, Inc.,	:	
	:	
Defendant.	:	
	:	

Pursuant to 28 U.S.C. § 1331, 1441 and 1446, Defendant, Nations Recovery Center, Inc. (“NRC”), by counsel, hereby removes the above-captioned action from the 43rd District Court, in the State of Michigan to the United States District Court, Eastern District of Michigan on the following grounds:

1. Plaintiff Kevin Pollack (“Pollack”) filed this action against NRC in 43rd District Court, in the State of Michigan, Case No. 17MH 062265 GC on February 2, 2017.
2. Pollack’s Complaint (attached hereto as Exhibit A) alleges a claim under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et. seq.* (the “TCPA”) and the Fair Debt Collection Practices Act 15 U.S.C. § 1692, *et. seq.* (the “FDCPA”).
3. On February 6, 2017, a copy of the Summons and Complaint was served on NRC (summons attached hereto as Exhibit B). Therefore, this removal is timely pursuant to 28 U.S.C. § 1446(b), having been made and filed within thirty days of receipt by the Defendant of a copy of the initial pleading setting forth the claim for relief upon which jurisdiction is based.

4. The United States District Court for the Eastern District of Michigan has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331 because Pollack's Complaint is based on alleged violations of the TCPA and the FDCPA.

PLEASE TAKE NOTICE that NRC will file copies of this Notice with the Clerk of the Clerk of the 43rd District Court for the State of Michigan pursuant to 28 U.S.C. § 1446(d).

Respectfully submitted,

/s/ Boyd W. Gentry
Boyd W. Gentry
Law Office of Boyd. W. Gentry
4031 Colonel Glenn Highway, First Floor
Beavercreek, OH 45431
(937) 839-2881
bgentry@boydgentrylaw.com
Counsel for Nations Recovery Center, Inc.

Charity A. Olson
Olson Law Group
2723 S. State St., Suite 150
Ann Arbor, MI 48104
734-222-5179
colson@olsonlawpc.com
Local Counsel for Nations Recovery Center, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served by the Court's CM/ECF service to all counsel of record on February 24, 2017.

/s/ Boyd W. Gentry
Boyd W. Gentry

STATE OF MICHIGAN
IN THE 43rd DISTRICT COURT

KEVIN POLLACK,
an individual,

Plaintiff,

Case No.

v.

Hon.

NATIONS RECOVERY CENTER, INC.,
A Georgia corporation,

Jury Trial Demanded

Defendant.

Kevin Pollack *in pro per*
30474 Palmer Blvd.
Madison Heights, MI 48071
(248) 990-0351

Registered Agent of Defendant
Corporation Service Company
40 Technology Parkway South
Suite 300
Norcross, GA 30092
(770) 925-0111

COMPLAINT

Now Comes Plaintiff, Kevin Pollack *in pro per*, and for its Complaint against
Defendant, states:

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THE PARTIES

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1. Plaintiff, KEVIN ALLEN POLLACK ("Plaintiff" or "Mr. Pollack"), is a natural person, and citizen of the State of Michigan, residing in Oakland County, Michigan.
2. Defendant, NATIONS RECOVERY CENTER, INC. ("Defendant"), is a Georgia Corporation with its principal place of business in Atlanta, Georgia in Dekalb County.
3. Defendant conducts business in Oakland County, Michigan.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Plaintiff's claim under MCL Section 600.8301, 47 U.S.C. § 227 Section 227(b)(3), and Section 227(c)(5).

5. Personal jurisdiction and venue in this district are proper pursuant to MCL Section 600.1621 because Plaintiff resides here and Defendant conducts business in this county.

FACTUAL BACKGROUND

6. Defendant makes outbound telephone calls in order to collect defaulted debts.

7. Defendant states, "We provide superior recovery using innovative methods and continuously evaluating new procedures."¹

8. Beginning in and around December 2015, Defendant began placing telephone calls to Plaintiff on his cellular telephone at telephone number 248-990-0351.

9. Defendant called Plaintiff from multiple telephone numbers.

10. At all times mentioned herein, Defendant called Plaintiff's cellular telephone using an "automatic telephone dialing system or an artificial or prerecorded voice" as defined by 47 U.S.C. § 227(b)(1)(a).

11. When Plaintiff answered the call from Defendant, Plaintiff said "Hello" and heard static prior to saying "Hello" a second time, seconds later an operator responded.

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12. Defendant immediately began questioning Plaintiff.

13. Defendant asked if Plaintiff was still getting his mail at Pembroke Dr. in

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Warren, Michigan.

¹ <http://www.natrecovery.com/> last accessed on January 25, 2017

14. Plaintiff stated that he does not live in Warren, Michigan.
15. Defendant asked if Plaintiff ever lived in Warren, Michigan.
16. Plaintiff denied ever living in Warren, Michigan.
17. Defendant asked if Plaintiff was Kevin J.
18. Plaintiff denied being Kevin J.
19. Plaintiff asked who was calling.
20. Defendant angrily responded, "OK sir, now were going to the whose calling."
21. Defendant then repeated, "Are you, or aren't you Kevin Pollack."
22. Plaintiff asked again who was calling.
23. Defendant stated again, "I'm not going to play whose who with you."
24. Not only did Defendant fail to identify itself during the call, but actually refused when asked by Plaintiff multiple times.
25. Plaintiff has received multiple calls from Defendant to his cellular phone in this fashion.
26. Defendant placed calls to Plaintiff using an "automatic telephone dialing system or an artificial or prerecorded voice" without the Plaintiff's prior express written consent as required by 47 U.S.C. § 227(b).
27. Defendant placed calls to Plaintiff's cellular telephone, telephone number 248-990-0351, which has been registered with the "National Do Not Call Registry" since May 10, 2011 in violation of 47 U.S.C. § 227(c)(3)(F). (see Exhibit "1")
28. The calls were made by, on information and belief, a machine that had the capacity to store and dial numbers to be called used a predictive algorithm, automatically, from a database or numbers or sequentially or a number generator.
29. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

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COUNT I – VIOLATIONS OF THE TCPA

30. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

31. Defendant made automated telephone calls to the cellular telephone number of the Plaintiff. These phone calls were made without the prior express written consent of the Plaintiff and were not made for emergency purposes.

32. Defendant has therefore violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b)(1)(A), which makes it “unlawful for any person within the United States, . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice.”

33. Each of the aforementioned calls by Defendant constitutes a violation of the TCPA.

34. Plaintiff is entitled to an award of:

- a. \$500.00 in statutory damages for each call made in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
- b. \$500.00 in statutory damages for each call made in violation of the TCPA pursuant to 47 U.S.C. § 227(c)(5)(B); or
- c. Statutory damages for each call made in violation of the TCPA under both sections pursuant to *Charvat v. NMP, LLC*, 656 F.3d 440 (6th Cir. 2011).

35. Plaintiff is also entitled to and does seek injunctive relief prohibiting Defendant’s violation of the TCPA in the future.

36. Plaintiff is also entitled to and does seek a declaration that:

- a. Defendant violated the TCPA;
- b. Defendant used an “automatic telephone dialing system or an artificial or prerecorded voice”; and
- c. Defendant placed calls to the Plaintiff without prior express written consent.

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COUNT II – WILLFUL VIOLATIONS OF THE TCPA

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37. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

38. Defendant made telephone calls utilizing an “automatic telephone dialing system or an artificial or prerecorded voice” to the cellular telephone number of the Plaintiff. These phone calls were made without the prior express written consent of Plaintiff and were not made for emergency purposes.

39. Defendant has therefore violated the TCPA, 47 U.S.C. § 227(b)(1)(A), which makes it “unlawful for any person within the United States, . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice.”

40. Each of the aforementioned calls by Defendant constitutes a knowing or willful violation of the TCPA.

41. Plaintiff is entitled to awards of up to:

- a. \$1500.00 in statutory damages for each call made in knowing or willful violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- b. \$1500.00 in statutory damages for each call made in knowing or willful violation of the TCPA pursuant to 47 U.S.C. § 227(c)(5); or
- c. Statutory damages for each call made in violation of the TCPA under both sections pursuant to *Charvat v. NMP, LLC*, 656 F.3d 440 (6th Cir. 2011).

42. Plaintiff is also entitled to and does seek injunctive relief prohibiting Defendant’s violation of the TCPA in the future.

43. Plaintiff is also entitled to and does seek a declaration that:

- a. Defendant knowingly and/or willfully violated the TCPA;
- b. Defendant knowingly and/or willfully used “automatic telephone dialing system or an artificial or prerecorded voice” on calls to Plaintiff;
- c. Defendant knowingly and/or willfully obtained the telephone numbers of non-customers;
- d. Defendant willfully placed automated calls to non-customers such as the Plaintiff, knowing it did not have prior express written consent to do so; and
- e. It is Defendant’s practice and history to place automated telephone calls to non-consumers without their prior express written consent.

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COUNT III –VIOLATIONS OF THE FDCPA

44. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

45. Defendant's repeated failure to identify itself, despite having multiple opportunities to do so, constitutes an intentional violation of the Federal Debt Collection Protection Act ("FDCPA").

46. Defendant has therefore violated the FDCPA 15 U.S.C. § 1692d(6) "Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity."

47. Plaintiff is entitled to an award of up to:

- a. \$1,000.00 in statutory damages for violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);

48. Plaintiff is also entitled to and does seek injunctive relief prohibiting Defendant's violation of the FDCPA in the future.

49. Plaintiff is also entitled to and does seek a declaration that:

- a. Defendant violated the FDCPA;
- b. Defendant used an "automatic telephone dialing system or an artificial or prerecorded voice"; and
- c. Defendant placed calls to the Plaintiff without prior express written consent.

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PRAYER FOR RELIEF

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WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant for:

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- a. Statutory damages pursuant to 15 U.S.C. § 1692k(a), 47 U.S.C. § 227(b)(3), and 47 U.S.C. § 227(c)(5);
- b. Injunctive relief prohibiting such violations of the FDCPA and TCPA by Defendant in the future;
- c. Declaratory relief as prayed for herein; and

d. Such further relief as this Court deems just and proper.
*as Plaintiff acknowledges that Satisfaction of the court is
limited to \$25,000.*

TRIAL BY JURY

Plaintiff is entitled to and hereby demands a trial by jury, pursuant to MCR
2.508(B)(1).

Respectfully submitted this ^{1st} ^{February} ~~31st~~ day of ~~January~~ 2017.

KEVIN A. POLLACK, *in pro per*
30474 Palmer Blvd
Madison Heights, MI 48071
Telephone: (248) 990-0351
pollackka@yahoo.com

By: 
Kevin A. Pollack, *in pro per*

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DOCUMENT PRESERVATION DEMAND

Plaintiff hereby demands that Defendant place a formal litigation hold as to any documents or data relating to the allegations in this case. Specifically, and without limitation, Plaintiff requests that all market research call records, documents and data that might bear on prior express written consent or any other defense, all documents and communications regarding use of any type of instrumentality, hardware, software or hosted telephone dialer communications between the parties regarding marketing by phone, contracts and agreements between the parties. This list is non-exhaustive.

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CERTIFICATE OF SERVICE

February 1st
I HEREBY CERTIFY that on ~~January 31st~~ 2017, I physically filed the foregoing document with the Clerk of the Court. I also certify that the foregoing document is being served ~~this date~~ via U.S. mail and/or some other authorized manner upon Defendant.

February 2nd 2017

KEVIN A. POLLACK, *in pro per*
30474 Palmer Blvd
Madison Heights, MI 48071
Telephone: (248) 990-0351
pollackka@yahoo.com

By:

Kevin A. Pollack, *in pro per*

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EXHIBIT “1”

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MADISON HTS, MI 48071



Kevin Pollack

National Do Not Call Registry - Your Registration Is Confirmed

1 message

Verify@donotcall.gov <Verify@donotcall.gov>

Fri, Jul 10, 2015 at 11:18 AM

Thank you for registering your phone number with the National Do Not Call Registry. You successfully registered your phone number ending in 0351 on May 10, 2011. Most telemarketers will be required to stop calling you 31 days from your registration date.

Visit <https://www.donotcall.gov> to register another number or file a complaint against someone violating the Registry.

Please do not reply to this message as it is from an unattended mailbox. Any replies to this email will not be responded to or forwarded. This service is used for outgoing emails only and cannot respond to inquiries.

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STATE OF MICHIGAN

43RD

JUDICIAL DISTRICT

JUDICIAL CIRCUIT

COUNTY PROBATE

SUMMONS AND COMPLAINT

CASE NO.

17MH 062265 GC

Court address

200 W. 13 MILE, MADISON HEIGHTS, MI 48071

248-583-1800

Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).

Kevin Pollack in proper
30474 Palmer Blvd
Madison Heights, MI 48071
(248) 990-0351

Plaintiff's attorney, bar no., address, and telephone no.

Defendant's name(s), address(es), and telephone no(s).

Nations Recovery Center, Inc.
Registered Agents of Defendant
Corporate Service Company
40 Technology Parkway South
Suite 300
Norcross, GA 30092
(770) 925-0111

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued

2.2.17

This summons expires

5.4.17

Court clerk

Z. Van Susteren

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***Family Division Cases**

☒ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)

Defendant(s) residence (include city, township, or village)

30474 Palmer Blvd Madison Heights, MI 48071 6491 Peachtree Industrial Blvd, Atlanta, GA 30360

Place where action arose or business conducted

Madison Heights
Oakland County, MI

02/01/2017

Date

[Signature]
Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

SUMMONS AND COMPLAINT

Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,
 together with _____

List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Signature: _____
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
 Attachments
 _____ on _____
 Day, date, time

Signature _____ on behalf of _____